Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1604

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION, *Petitioner*

v.

NATIONAL CITIZENS COMMITTEE FOR BROADCASTING, FEDERAL COMMUNICATIONS COMMISSION, and UNITED STATES OF AMERICA, *Respondents*

STATEMENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The Brockway Company, Watertown, New York, respondent herein, by its attorneys, submits the following statement in support of the Petition for Certiorari in the above case filed May 16, 1977.

For many years, The Brockway Company has published the Watertown Daily Times, Watertown, N.Y. (population 30,787), and has been the licensee of station WWNY-TV in nearby Carthage, N.Y. (population 3,889).

Brockway was a party to the rulemaking proceeding before the Federal Communications Commission, which proceeding culminated in the Second Report and Order, 50 FCC 2d 1046, on reconsideration, 53 FCC 2d 589 (repro-

duced in the Federal Communications Commission's Appendix to its Petition for Writ of Certiorari, No. 76-1471, at pp. 61-158). This Second Report and Order requires a Brockway divestiture within five years of either WWNY-TV or The Watertown Daily Times.

Brockway was a petitioner in the proceeding to review the Second Report and Order in the United States Court of Appeals for the District of Columbia Circuit (Case #75-1614). That Court vacated in part the Federal Communications Commission's Second Report and Order and remanded the record for adoption of a rule in conformity with the Court's opinion. National Citizens Committee for Broadcasting, et al. v. Federal Communications Commission and United States of America, et al., No. 75-1064 (FCC App. 1-60). The Court below sustained the Commission's prospective ban on cross-ownership of co-located newspapers and broadcast stations, but reversed that part of the FCC's Second Report and Order which declined, except in a few cases like Brockway, to ban cross-ownership of existing co-located broadcast stations and daily newspapers. Respondent is adversely affected by the decision of the Court below holding that the cross-ownership rules do not exceed the Commission's authority nor violate the First and Fifth Amendments of the Constitution, and directing the Commission to promulgate a rule which would require divestiture in every market where such cross-ownership exists. However, Respondent concurs with that part of the decision below holding that the lines drawn by the Commission between the few cases where divestiture was ordered and all other co-located combinations were arbitrary, capricious, and without record support.

Respondent supports the Petition for Writ of Certiorari filed May 16, 1977, by the Petitioner herein, and, for the

reasons expressed therein, respectfully urges this Court to issue such Writ.

Respectfully submitted,

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